THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.19900 OF 2006

DATED 29th SEPTEMBER, 2006

BETWEEN:

The Seethammadhara Cooperative House Building Society Limited rep.by its Secretary.

… Petitioner

AND

The Principal Secretary, State of Andhra Pradesh, Revenue (UC.I) Department, Secretariat Buildings, Hyderabad and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.19900 OF 2006

ORDER:

Seethammadhara Cooperative House Building Society Limited (the Society, for brevity) filed the present writ petition seeking a writ of Mandamus declaring the orders of the first respondent in Memo No.87/UC.I(1)/03-6, dated 05.08.2006, as arbitrary, illegal and unconstitutional. The Society also seeks a consequential direction to accord exemption under Section 20(1)(a) of the Urban Land (Ceiling and Regulation) Act, 1976 (the ULC Act, for brevity). The petitioner Society was registered under A.P.Cooperative Societies Act, 1964. Under an agreement of sale, dated 02.01.1982, the Society purchased land admeasuring Acs.6.00 cents in survey No.81/3 of Marripalem village, Visakhapatnam District (hereafter called, the petition land) for consideration of Rs.2,42,800/-. The Society allegedly was delivered possession of the land. At the relevant time, the orders of the Government in G.O.Ms.No.136, dated 28.01.1981, which enabled the owners of the urban land and Cooperative House Building Societies to

get the land exempted from the purview of ULC Act, were in force. The Society and its vendors submitted applications under Section 20(1)(a) of the ULC Act seeking exemption as per the said Government Order. The second respondent allegedly recommended for exemption. But the first respondent by Memo No.20767/UC.I(2)/92-2, dated 13.08.1993 rejected the requests for grant of exemption. The petitioner challenged the rejection in W.P.No.2759 of 1994. This Court allowed the writ petition on 29.10.1997 and remanded the matter to the first respondent for re-considering the whole issue in the light of the observations made by this Court in the said order. The Government reconsidered the matter and again rejected the request for exemption by Memo No.26542/UC.I(2)/94-15, dated 19.01.1999 after giving an opportunity of hearing the Secretary of the Society.

The Society filed yet another writ petition being W.P.No.8520 of 1999 assailing the orders of the Government, dated 19.01.1999 rejecting the exemption of the petitioner society. While the matter was pending before this Court, the Government issued orders in G.O.Ms.No.455, dated 29.07.2002 framing guidelines for allotment/regularization of urban vacant land, which vested in the Government by reason of Section 10(3) of the ULC Act. In view of this, the Society sought Court's permission and withdrew the writ petition. The writ petition was dismissed as withdrawn on 24.05.2005. Thereafter, the petitioner Society submitted representation on 07.06.2006 requesting the first respondent to consider the case of the petitioner under G.O.Ms.No.136, dated 28.01.1981, and the Government Orders Nos.455 and 456 and grant exemption under Section 20(1)(a) of the ULC Act. When the same was pending before the Government, the Society again filed yet another writ petition being W.P.No.12975 of 2006 complaining the inaction on the part of the first respondent. At that stage, it is alleged that the Government Pleader informed the counsel for the petitioner Society, that the request of the petitioner Society was rejected by the Government by impugned order, dated 05.08.2006. Therefore, the present writ petition is filed.

The learned counsel for the petitioner submits that the impugned order passed by the Government rejecting consideration as per G.O.Ms.Nos.455 and 456 is totally without application of mind and arbitrary. Secondly, he submits that when the application was made seeking exemption under G.O.Ms.No.136, the Society as well as its vendors filed affidavits, which would show that there was valid agreement between them, which itself is sufficient for granting exemption. The learned counsel would further contend that after taking possession of the property, the Society levelled and developed the land in survey No.81/3 of Marripalem village, that when the writ

petition filed by the Society challenging the rejection order, dated 19.01.1999, the first respondent assured the members of the Society to give benefit under G.O.Ms.No.455 and the present rejection is therefore illegal.

After carefully perusing various Government Orders passed from time to time and after considering the submissions of the learned counsel for the petitioner Society, this Court is of considered opinion that the petitioner has no right whatsoever to insist upon exemption under Section 20(1)(a) of the ULC Act or allotment of land to its members under Section 23 of the ULC Act. This Court is also of considered opinion that the respondents exercised the power vested in them under Sections 20(1)(a) and 23 of the ULC Act validly and legitimately keeping in view the purpose and object of the provisions of the ULC Act. The writ petition is wholly unsustainable and the brief reasons for this are as under.

The record revealed that Smt.Parvatidas and nine others filed an application before the Government seeking exemption under Section 20(1)(a) of the ULC Act and G.O.Ms.No.136 in respect of the land admeasuring 24,288 square meters in T.S.No.81/3 of Marripalem village. They sought exemption to enable them to transfer the land in favour of the petitioner Society. The matter was enquired into by the District Collector, Visakhapatnam. He reported that the petitioner did not produce any documentary evidence and that the transaction is an oral agreement. Therefore, the Government initially rejected the request of the society and its vendors by order, dated 13.08.1993. The petitioner challenged the same before this Court by way of writ petition, which was allowed remanding the matter to the Government. As directed by this Court, an opportunity was given to the petitioner Society. At that stage, the legal heirs of the vendors sent a legal notice on 06.02.1998 alleging that the Society is trying to grab the land and that they never entered into agreement with the Society. The Government, therefore, enquired with the Sub-Registrar, Visakhapatnam, who reported that there was no sale deed or power of attorney in relation to the petitioner registered in his office. The second respondent herein also sent a report stating that the land admeasuring 27,606 square meters in survey Nos.81/3B to 81/3i of Marripalem village was handedover to Visakhapatnam Urban Development Authority on 10.04.1994. Therefore, the Government came to a conclusion that the facts do not justify exemption under Section 20(1)(a) of the ULC Act. Accordingly, by their Memo, dated 19.01.1999, the Government rejected the request for exemption for the following reasons.

1) The transaction between the society and the land owner

(GPA holder) is an oral agreement, which do not stand test of the law.

2) The land was already handed over to the Visakhapatnam Urban Development Authority after clearance by the State Level Allotment Committee.

3) The oral agreement entered by the society with the land owner is violative of the conditions laid down in G.O.Ms.No.136, dated 28.01.1981.

4) According to the guidelines issued by Government of India, the land holder and an authorized agent of the housing society concerned should file affidavits before the State Government seeking for exemption. In the instant case, the legal heirs of the land owner have filed petition not to consider the request of the society for exemption.

There is no denial before this Court that the benefit of exemption under G.O.Ms.No.136 is available to those Cooperative Societies only when the transaction between the excess landholder and the Society is reduced into writing and is not in contravention of the provisions of the ULC Act. It has never been the case of the petitioner Society that there was written agreement between the petitioner and the vendors. Indeed, initially the vendors themselves filed applications seeking exemption to enable them to transfer the land to Society. Be that as it is, though the petitioner challenged the Memo of the Government, dated 19.01.1999, by filing W.P.No.8520 of 1999, the petitioner did not pursue the case to its logical end. On its request, this Court dismissed the writ petition as withdrawn. Therefore, the order of the Government, dated 19.01.1999, rejecting the exemption has become final. Secondly, the Secretary of the petitioner Society submitted representation on 07.06.2006 seeking exemption for regularization under G.O.Ms.Nos.455 and 456 or alternatively to consider exemption under G.O.Ms.No.136. As the request for favourable orders under G.O.Ms.No.136 was already considered and rejected, such a question would not arise. Whether the Society is entitled to seek exemption under G.O.Ms.No.455 and 456? As rightly pointed out by the learned Assistant Government Pleader for Revenue (General) so as to seek allotment/regularization of vacant land, which vested in the Government, the person should be in possession of the land by reason of a written document as on the date of the vesting of the land. In this case, there is no written agreement in favour of the petitioner Society nor it was in possession of the land when the G.O.Ms.No.455 was issued. As seen from the order of the Government, dated 19.01.1999 rejecting exemption under G.O.Ms.No.136, the land was taken over possession by the second respondent and was handed over to Visakhapatnam Urban Development Authority on 10.04.1994.

Therefore, the question of considering the case of the petitioner for allotment of the land does not arise. The Government has taken into consideration all aspects of the matter before passing the impugned order rejecting the claim of the petitioner. The same does not warrant any interference.

The writ petition is accordingly dismissed. No costs.

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(V.V.S.RAO,J)

29.09.2006.
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